IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In re:	)	
	)	
TRIAD CONSTRUCTION SERVICES, INC.,	)	Chapter 11 Case No. 11-10113
	)	
Debtor.	)	
	)	

DEBTOR'S EMERGENCY MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363

NOW COMES Triad Construction Services, Inc. (the "Debtor"), by and through counsel, and requests entry of an order pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001 and 9014 authorizing the Debtor to use the cash collateral of High Point Bank and Trust Co. ("HPB") and First Sealord Surety, Inc. ("First Sealord") (the "Motion"). In support of the Motion, the Debtor states as follows:

1. On January 27, 2011 (the "Petition Date"), the Debtor filed a voluntary petition under the provisions of Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina. The Debtor currently operates as a debtor-in-possession.

2. The Court has jurisdiction over this case pursuant 28 U.S.C. § 1334(b). Venue is proper in this district pursuant to 28 U.S.C. 1408. This is a "core" matter pursuant to 28 U.S.C. § 157(b)(2)(A), (D), (K), and (M).

3. No official committee of unsecured creditors has been appointed in this case pursuant to 11 U.S.C § 1102.

4. The Debtor is a corporation organized and existing under the laws of the North Carolina with a principal place of business in High Point, Guilford County, North Carolina.

Prior to the Petition Date, the Debtor operated as a provider of concrete installation and construction services. Its assets consist primarily accounts receivable resulting from the services it has performed.

5. Since the Petition Date, Debtor has managed its affairs and continued in the possession of its assets pursuant to 11 U.S.C. §§ 1107 and 1108.

6. The Debtor has a line of credit with HPB in the maximum principal amount of $650,000.00 (the "HPB Indebtedness").[1] The documents (the "Loan Documents") relating to the HPB Indebtedness are as follows:

(a) A Promissory Note dated June 27, 2007 in the amount of $150,000.00.

(b) A Commercial Security Agreement dated June 27, 2007 which, among other things, granted HPB a first priority security interest in the Debtor's inventory, accounts, equipment and general intangibles, as more fully described in the applicable security documents (the "HPB Collateral").

(c) A Change in Terms Agreement dated May 29, 2008 which, among other things, extended the maturity date to June 27, 2009.

(d) A Change in Terms Agreement dated December 3, 2009 which, among other things, extended the maturity date to November 27, 2010.

(e) A Change in Terms Agreement dated March 17, 2010 which, among other things, increased the credit line to $650,000.00 and extended the maturity date to April 27, 2011.

7. HPB properly perfected its interest in the HPB Collateral by filing a UCC-1 Financing Statement with the North Carolina Secretary of State on October 7, 2002 (the "HPB

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[1] HPB has two other purchase money loans to the Debtor, each of which is secured by a vehicle owned by the Debtor. Those loans are not a subject of this Motion.

Financing Statement"). On August 7, 2007, HPB filed a UCC-1 Continuation Statement with the North Carolina Secretary of State (the "HPB Continuation Statement").

8. Richard C. Phillips, the Debtor's president, and George W. Holbrook, the Debtor's Vice President, unconditionally guaranteed the HPB Indebtedness pursuant to certain Commercial Guaranties.

9. As of January 26, 2011, the aggregate amount due from Debtor to High Point Bank under the HPB Indebtedness, not including attorneys' fees, costs, and other charges to which High Point Bank also may be entitled, was approximately $640,000.00 (the "HPB Existing Obligations").

10. The Debtor is a party to a General Indemnity Agreement (the "Indemnity") with First Sealord dated April 16, 2010 in which the Debtor. In connection with the Indemnity, the Debtor pledged as collateral, among other things, the Debtor's accounts (the "First Sealord Collateral"). First Sealord filed a UCC-1 Financing Statement with the North Carolina Secretary of State on January 24, 2011 (the "First Sealord Financing Statement").

11. Mr. Phillips and Mr. Holbrook, among others, were also parties to the Indemnity.

12. As of January 25, 2011, the Debtor's aggregate accounts receivable had an estimated value of approximately $2.1 million. The Debtor further has cash on hand in the amount of approximately $32,000.00.

13. There appears to be sufficient equity in the pre-petition HPB Collateral and First Sealord Collateral in excess of the HPB Existing Obligations and any obligation which may be currently owing to First Sealord.

14. The Debtor seeks authorization to use HPB's and First Sealord's "cash collateral" (as such phrase is defined for purposes of 11 U.S.C. § 363(a)) (the "Cash Collateral").

15. The Debtor is currently anticipating a continuation of its operations by way of this proposed reorganization. The Debtor believes that in order to maintain existing operations, and retain maximum value of its business, the Debtor will be required to incur certain operating expenses. The Debtor's only significant source of income is through continued business operations and the resulting accounts receivable generated thereby. The Debtor has not other readily available cash with which to operate its business. As a result, the Debtor respectfully requests a preliminary hearing on this motion in order to avoid a closing down of operations and immediate and irreparable harm to the estate.

16. The Debtor will require necessary funds for operating its business and other expenses. These expenses include the purchase of additional concrete and cement, payroll, maintenance, insurance, and other operating expenses, as well as applicable taxes.

17. The Debtor will maintain one or more Debtor-in-Possession ("DIP") bank accounts, into which it will deposit all cash, check and cash items.

18. The Debtor represents and believes that a reorganization and continuation of its operations will generate the greatest source of funds for creditors, including secured creditors. The Debtor will require access to cash collateral generated by its business operations in order to allow it to continue operations.

19. If the use of the Cash Collateral is not immediately approved, the Debtor and the estate will suffer immediate and irreparable harm, in that it will not be able to pay its expenses from funds generated by its business operations. If the Debtor is unable to maintain its cash flow, it cannot possibly succeed in its reorganization through this bankruptcy proceeding. Rule 4001(b)(2) provides as follows:

> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 15 day period expires, but the court may authorize the use of only that amount of cash collateral

as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Pursuant to Rule 4001, the Debtor respectfully requests a preliminary hearing authorizing it to use Cash Collateral as specified in this Motion.

20. Although the Debtor believes that it possesses some assets that are not encumbered by the Loan Documents, including, without limitation, certain equipment, such assets are not liquid and are not immediately available for use by the Debtor in satisfying its operating expenses.

21. The Debtor believes that good cause has been shown for the entry of the relief requested in this Motion. Among other things, entry of such relief will preserve the realizable value of Debtor's assets and permit Debtor to maintain, preserve, and protect those assets until they may be sold, collected, or otherwise realized upon.

22. Debtor has requested the immediate entry of an Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). The permission to use Cash Collateral requested hereby is necessary to avoid immediate and irreparable harm to the bankruptcy estate pending a final hearing on the Debtor's use of Cash Collateral.

23. In accordance with Rules 1007(d) and 4001(b), any creditors' committee in this case pursuant to 11 U.S.C. § 1102 will be chosen from the twenty largest unsecured creditors of the Debtor, all of whom are named in the list which accompanies this Motion.

WHEREFORE, the Debtor respectfully prays for the following relief:

(a) For a preliminary hearing on this Motion to avoid the possibility of immediate and irreparable harm to the estate;

(b) For leave of the Court pay necessary expenses utilizing current Cash Collateral generated by the Debtor's operations;

(c) For an order authorizing the Debtor's use of the Cash Collateral pursuant to 11 U.S.C. § 363;

(d) For a final hearing on the Motion; and

(e) For such other and further relief that this Court deems necessary and appropriate.

This the 27th day of January, 2011

ROBERSON HAWORTH & REESE, P.L.L.C.

/s/James C. Lanik
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ATTORNEYS FOR DEBTOR

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